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Acting Assistant Attorney General
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October 6, 1997

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Criminal Division
United States Department of Justice
10th Street & Constitution Ave., N.W.
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CONFIDENTIAL

Re: Conduct of Claudia J. Flynn in the Office of
Independent Counsel's Prosecution of United States
of America v. Deborah Gore Dean, Criminal No. 92-
181-TFH (D.D.C.)

Dear Mr. Keeney:

This letter is to bring to your attention a matter concerning the involvement of Claudia J. Flynn, Chief of Staff to the Assistant Attorney General for the Criminal Division, in what appears to have been criminal conduct in the prosecution of United States of America v. Deborah Gore Dean, Crim. No. 92-181-TFH (D.D.C.), by the Office of Independent Counsel Arlin M. Adams.

By letter dated November 30, 1995, I provided you extensive materials relating to prosecutorial abuses by Independent Counsel attorneys in the reference case. In December 1994 and January 1995, I had provided the same materials to the Attorney General in an effort to cause the Department of Justice to investigate the Office of Independent Counsel Arlin M. Adams. In February 1995, I had provided the materials to White House Counsel Abner J. Mikva in an effort to persuade Judge Mikva to advise the President to seek the removal of the Honorable Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division because Ms. Harris's action as the lead trial counsel in the Dean case indicated that she was not fit to oversee the ethics of federal prosecutor. By letter dated June 28, 1995, Michael E. Shaheen, Jr., Counsel for the Office of Professional Responsibility, informed me that the Department of Justice had declined to take action, among other reasons, because the

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principal offending attorneys had left the Office of Independent Counsel.¹

By letter to Mr. Shaheen dated August 15, 1995, I requested the Department of Justice to reconsider the decision not to investigate the Office of Independent Counsel. I also requested that Mr. Shaheen state to me in writing whether in reviewing my allegations the Department of Justice had interviewed any of the former Independent Counsel attorneys I had identified as being involved with the prosecutorial misconduct or certain other individuals, including Supervisory Special Agent Alvin R. Cain, Jr., who is one of the principal figures in the subject addressed in this letter.

Mr. Shaheen had not responded to my letter of August 15, 1995, when at the end of November 1995 I brought the same matters to your attention because two of the principal offending Independent Counsel attorneys, Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill, had joined the Department of Justice, Mr. Swartz as a Special Assistant in your office and Mr. O'Neill as an Assistant United States Attorney in the Middle District of Florida.² In my letter

¹ Judge Mikva had referred my allegations concerning Assistant Attorney General Harris to the Department of Justice, assuring me that the Department would carefully review those allegations. Mr. Shaheen's letter, however, made no reference to fact that I had made allegations concerning Ms. Harris, who had tendered her resignation sometime near the middle of May 1995.

² It appears that Mr. Swartz had joined the staff of Assistant Attorney General Jo Ann Harris at approximately the same time that I had originally raised these issues with the Attorney General. Mr. O'Neill had joined, or returned to, the Office of the United

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I maintained that the documented misconduct of Mr. Swartz and Mr. O'Neill in the prosecution of the Dean case indicated that they were unfit to represent the United States. At the same, I raised the same issues, solely with regard to Mr. O'Neill, with Charles R. Wilson, United States Attorney for the Middle District of Florida.

Evidently, you and Mr. Wilson referred the materials to the Office of Professional Responsibility, and Mr. Shaheen responded to me by letter dated January 30, 1996. Mr. Shaheen stated that the Department of Justice regarded my letter to you as an attempt to cause the Department to reconsider its earlier decision not to investigate the Office of Independent Counsel Arlin M. Adams and that the Department declined to reconsider that decision. In his letter Mr. Shaheen refused to state whether the Independent Counsel had interviewed Agent Cain or any of the other persons mentioned in my letter of August 15, 1995. I then wrote again to you, by letter dated March 11, 1996, pointing out, among other things, that the Office of Professional Responsibility's decision to take no action did not resolve the issue of your own responsibilities in overseeing the conduct of Mr. Swartz and Mr. O'Neill. I never received a response from you on that matter and I do not know whether Claudia J. Flynn was on your staff at the time or had any role in your decision not to address the matters raised in the materials I provided you.

States Attorney shortly after the conclusion of the trial of the Dean case in October 1993.

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One of the issue addressed at length in my letters to you of November 30, 1997 (at 5-14) and March 11, 1997 (at 5-9) concerned the Independent Counsel's actions regarding Supervisory Special Agent Alvin R. Cain, Jr., an Independent Counsel rebuttal witness on whose testimony Associate Independent Counsel Robert E. O'Neill placed great weight in undermining Deborah Gore Dean's credibility during closing argument.³ In broad summary, much of the misconduct described in the materials I provided you involved Count One of the Superseding Indictment, which alleged that Dean had conspired with former Attorney General John N. Mitchell and others to defraud HUD by causing the funding of moderate rehabilitation projects with which Mitchell's clients had an interest. There was no evidence, however, that Dean was aware while she was at HUD that Mitchell earned any HUD consulting fee. Dean denied any knowledge that Mitchell earned HUD consulting fees until she read in the HUD Inspector General's Report when it was released in April 1989 that Louie B. Nunn had paid Mitchell a \$75,000 fee on a moderate rehabilitation project called Arama that was funded as a result of HUD actions in 1984.

³ See also my letters to Associate Deputy Attorney General David Margolis, dated May 25, 1995 (at 6-12), to Michael E. Shaheen, Jr., Counsel for the Office of Professional Responsibility, dated August 14, 1995 (at 3-11) and March 11, 1995 (at 5-11), to Independent Counsel Larry D. Thompson, dated September 18, 1995 (at 5-14), and to Mark J. Hulkower, dated August 4, 1997.

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Dean gave emotional testimony about calling Agent Cain, the investigator in the HUD Inspector General's Office who had authored the Inspector General's Report on the moderate rehabilitation program, to complain about the treatment of Mitchell in the report and to demand to know if there existed a check showing that Mitchell had in fact received a \$75,000 payment from Nunn. (A prosecution objection had prevented Dean from stating what Cain had told her.) Immediately after Dean left the stand, Agent Cain, who had been assigned to the Office of Independent Counsel since 1990, appeared as an Independent Counsel rebuttal witness and firmly denied any recollection of the call from Dean. Both in the initial and rebuttal portion of his closing argument, Associate Independent Counsel O'Neill provocatively cited the testimony of Agent Cain as demonstrating that Dean had lied about the call to Cain and had generally lied about her knowledge or Mitchell's involvement with HUD programs.⁴

⁴ Three quarters of the way through the first day of the closing argument, Associate Independent Counsel O'Neill pressed the attack on Dean's credibility with particular acerbity, stating:

Based on her lies, you should throw out her entire testimony. Her six days' worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to you.

Tr. 3418.

Moments later, O'Neill derisively turned to Dean's denial that she knew Mitchell had earned HUD consulting fees and Agent Cain's contradiction of Dean's testimony about calling him to question the treatment of Mitchell in the HUD Inspector General's Report. O'Neill stated the following:

Shocked that John Mitchell made any money. Remember she went into great length about that. That she was absolutely shocked. And the day the I.G. Report came out she called Special Agent Alvin Cain, who was at HUD at the time, and said I'm shocked. I can't believe it. I thought you were my friend. You should have told me John Mitchell was making money. You'd better be able to defend what you said and if you can't I'm going to hold a press conference and I'm going to do something, I'm going to rant and rave. That's exactly what she told you.

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Given that Agent Cain was an African-American and that Dean was being tried before an entirely African-American jury, there is reason to believe that Cain's testimony had considerable impact.

In support of a motion for a new trial filed on November 30, 1993, Dean argued that Cain had lied about the call. She filed an affidavit stating that when she called Cain, he had told her that there did exist a check showing Nunn's payment to Mitchell but that the check was then maintained in HUD's Atlanta Regional Office. Dean also stated that immediately after calling Cain in April 1989, she had told me, whom she was then dating, about the call to Cain, including what Cain had told her about the whereabouts of the check. I submitted an affidavit stating that I clearly remembered Dean's telling me about the call and telling me that Cain had said the check was maintained in a HUD field office. Dean argued that if the check was maintained in a field office in April 1989, it would corroborate her testimony about the call to Cain.

Though not logically impossible that Dean could have been lying when she told me about the call to Cain, it was inconceivable that she would have done so at a time when there was no purpose in fabricating such a story. Thus, if my affidavit was true, it was virtually impossible to believe that Cain's testimony was true. Despite the fact that I was a career

So we had to call in Special Agent Alvin Cain for two minutes' of testimony. And you heard Mr. Cain. It didn't happen. It didn't happen like that. And he remembered Marty Mitchell picking up the report, bringing the money, but it didn't happen. They asked him a bunch of questions about the Wilshire Hotel, and you could see Mr. Cain had no idea what they were talking about. We had to bring him in just to show that she lied about that.

Tr. 3419-20.

During rebuttal the following day, while continuing the attack on Dean's credibility, O'Neill again turned to Cain, asserting:

Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

Tr. 3506.

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government attorney, close to retirement eligibility, the Independent Counsel made no effort to contact me during the weeks in which it was preparing its opposition in order to attempt to determine whether I had lied in my affidavit or whether the circumstances in which Dean told me about the call admitted of the possibility the Dean had fabricated the story.

When the Independent Counsel filed its opposition, apart from suggesting in a footnote that my affidavit was false, the Independent Counsel said nothing about the whereabouts of the check in April 1989 or about Dean's argument that if the check was maintained in a field office in April 1989 it would corroborate her testimony about the call to Agent Cain. At the same time, the Independent Counsel persuaded the probation officer to recommend an increase in Dean's sentence on the basis of Agent Cain's contradiction of Dean's testimony about calling Cain in April 1989.

Dean then filed a motion for reconsideration, requesting discovery concerning the whereabouts of the check in April 1989 and whether Cain had lied with the knowledge of Independent Counsel attorneys. At a hearing on February 22, 1994, the Independent Counsel responded for the first time concerning the check. Appearing for the Independent Counsel, Deputy Independent Counsel Bruce C. Swartz argued that Dean had surmised that the check was maintained a field office from an entry in the HUD Inspector General's Report showing that certain contracts on the Arama project showed to Louie B. Nunn in a December 12, 1988 interview had come from an audit file in the Atlanta Regional Office.⁵

Mr. Swartz did not indicate whether the Independent Counsel maintained that it was in April 1989 that Dean had surmised that the check was maintained in the Atlanta Regional Office and that she had then lied to me about the call to Cain, or that I had been party to a recent fabrication of the story about the call to Cain.

⁵ The interview said nothing about the check and clearly indicated that the HUD investigators did not then have a copy of the check. There was no mention of requesting a copy of the check from Nunn.

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The court refused to reconsider its earlier ruling denying the motion for a new trial or to allow the discovery sought by Dean, stating that the evidence put forward "doesn't mean of necessity the government is putting on information they knew was false before the jury." Later in the day, the court considered the probation officer's recommendation that Dean's sentencing level be increased because she had lied about the call to Cain. Appearing for the Independent Counsel to discuss that and other sentencing issues, and presumably ready to make the same arguments that Mr. Swartz had made regarding the check, was Associate Independent Counsel Claudia J. Flynn. Without hearing argument on the issue, however, the court refused to accept the probation officer's recommendation, indicating that the court believed that Dean may have made the call. Shortly thereafter, in the context of a related ruling, the court appeared to indicate a belief that Dean had in fact called Cain.

The materials I provided you on November 30, 1995, ought to have made it clear enough that, unless Mr. Swartz in fact believed that Dean has surmised that the check was maintained in a HUD field office from the entry in the HUD Inspector General's Report at the time he made an argument to that effect in order to persuade the court not to allow inquiry into whether Agent Cain committed perjury with the knowledge or complicity of Independent Counsel attorneys, Mr. Swartz had attempted to obstruct justice and very likely had conspired with others in doing so. Yet, no person of average intelligence could believe that Mr. Swartz or any other Independent Counsel attorney believed that Dean has surmised that the check was maintained in a HUD field office from the cited entry in the Inspector General's Report. Indeed, I suggest there is not the slightest possibility that Mr. Shaheen or any Justice Department Official who gave this matter any attention was not confident both that Ms. Dean had made the call and that Mr. Swartz had attempted to deceive the court in his efforts to avoid discovery. In any event, I believe the compelling evidence of criminal activity in this matter and several others like it will enable me eventually to persuade the Inspector General that the Department failed to investigate my allegations in good faith, and that part of the reason for that failure was the belief that such an investigation would establish that high-ranking officials of the Department, including Mr. Swartz and Ms. Harris, had violated federal laws through their action in the prosecution of the Dean case.⁶

⁶ There is also considerable reason to believe that, subsequent to the Department of Justice's last refusal to act concerning this matter, Independent Counsel

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I write you now because it recently came to my attention that Associate Independent Counsel Claudia J. Flynn, who apparently was ready to participate in Mr. Swartz's effort to mislead the court at the hearing on February 22, 1994, is the Chief of Staff of the Criminal Division. If Mr. Swartz did attempt to obstruct justice through actions including his effort to mislead the court at that hearing, Ms. Flynn would seem necessarily to have been a party to that effort. If so, then I suggest that Ms. Flynn is not fit to continue to serve in her position as Chief of Staff.

I first raised this matter with Ms. Flynn by letter dated June 10, 1997 (a copy of which is enclosed). I did so at that time in the context of a request that Ms. Flynn state the positions (with dates) she had held with the Office of Independent Counsel and Department of Justice and that she provide me a copy of any official Department of Justice biography on her. In my letter, I explained in some detail the reasons to believe that she had conspired to obstruct justice through her actions concerning the Cain matter, advising her (at 6-7) that I would again be raising these issues with the Department of Justice. I also invited her to advise me of any way in which I might have misconstrued the events described in my letter, though noting that it might be necessary for her to secure the permission of Independent Counsel Larry D. Thompson in order to do so.

By letter dated July 6, 1997 (a copy of which is enclosed), I again requested from Ms. Flynn the information concerning her tenure with the Department of Justice and the Office of Independent Counsel. By letter dated August 18, 1997 (a copy of which is enclosed), I again requested that information.

attorneys have committed further criminal acts, at least one of which Mr. Shaheen and other Department of Justice officials either knew about or should have known about. See my letters to Independent Counsel Larry D. Thompson dated May 26, 1997, and August 13, 1997. See also note 8, infra.

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In the letter of August 18, 1997, I also provided Ms. Flynn with additional information concerning the Cain matter. I also pointed out to Ms. Flynn that, while I entertained few doubts about her knowing involvement in an effort to obstruct justice concerning the matter, if I was mistaken in that regard, it would not resolve certain issues. In particular, I pointed out that unless Ms. Flynn continued to believe that Mr. Swartz in fact believed that Dean had surmised that the check showing Louie B. Nunn's \$75,000 payment to John N. Mitchell was maintained in a HUD field office in April 1989 from an entry in the HUD Inspector General's Report, as he had argued to the court in order to resist discovery, Ms. Flynn nevertheless had certain responsibilities based on her earlier involvement in the matter.⁷

I noted that her failure to make any effort to discharge such responsibilities by bringing her knowledge concerning this matter to the attention of an appropriate authority ordinarily would be interpreted as suggesting that she was knowingly involved from the outset. Ms. Flynn never responded to these letters.

In reviewing these issues with Ms. Flynn, an important consideration concerns her belief, in February 1994, as to whether Deborah Gore Dean had surmised that the check showing Nunn's payment to Mitchell was located in a HUD field office in April 1989 from the entry in the HUD Inspector General's Report.

Be mindful that in addressing this issue with Ms. Flynn, you must be satisfied that any denials of knowing involvement on her part are not merely plausible but are in fact true, and that any false statement by Ms. Flynn or any effort to conceal or cover up the true nature of her own actions or actions of other Independent Counsel attorneys would violate 18 U.S.C. § 1001.

One relevant consideration in an appraisal of any denial by Ms. Flynn of knowing involvement in the matter is whether she brought this matter to the attention of an appropriate Justice Department official upon receipt of my recent letters. Even if Ms. Flynn did bring this matter immediately to the attention of appropriate officials, I believe that the case that she knowingly participated in an effort to deceive the court in resisting

⁷ A phrase is missing from the portion of page 2 of my letter to Ms. Flynn where I made this point. I think the point was nevertheless clear enough.

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discovery on the Cain matter would remain compelling. But if she failed to bring these matters to the attention of Justice Department officials upon receipt of my letter, that would be significant additional evidence of her knowing participation in the attempt to deceive the court.

If you conclude that Ms. Flynn did not believe that Dean had surmised that the check was located in a HUD field office in April 1989 from the entry in the HUD Inspector General's Report, it would seem necessarily to follow that you must conclude that Ms. Flynn engaged in a conspiracy to obstruct justice. In that event, your responsibility would be not merely to see that Ms. Flynn is removed from her position with the Department, but to bring to the attention of an appropriate authority evidence indicating that Ms. Flynn or others associated with the matter violated federal laws.

As noted above, copies of my recent correspondence with Ms. Flynn are enclosed. Also enclosed on diskette, in WordPerfect 6.0, are copies of my prior correspondence to the Department of Justice or the White House, as well all my correspondence to Independent Counsel Larry D. Thompson and other counsel for the Office of Independent Counsel (apart from some recent correspondence relating to Freedom of Information Act requests),⁸

⁸ I initially corresponded with Mr. Thompson between September 18, 1995 and February 18, 1996, concerning the same matters I had brought to the attention of the Department of Justice and Mr. Thompson's responsibilities with regard to ensuring the disciplining or prosecution of culpable Independent Counsel attorneys and with regard to bringing to the attention of the courts any matters where Independent Counsel attorneys presented false evidence or made representations that those attorneys believed to be false. I resumed my correspondence with Mr. Thompson in February 1997, initially concerning my request to examine the originals of several government exhibits certain of which the Independent Counsel introduced into evidence representing to be things they were not. Mr. Thompson refused to allow me to examine the originals of the exhibits and instead provided me with what he represented to be true copies of the exhibits, but from which the most crucial item was missing. I then continued to write to Mr. Thompson requesting that he state whether the item had been removed from the exhibit before the exhibit was introduced into evidence or whether the item had been part of the exhibit when the exhibit was introduced into evidence but the original was now missing from Independent Counsel files. The correspondence addressed certain other matters as well, including the fact that subsequent to the Department of Justice's second refusal to act in this matter, the Independent Counsel, apparently with full knowledge of Mr. Shaheen and other Department of Justice officials, falsely represented to the Honorable Stanley S. Harris

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with correspondence back to me in hard copy. All letters cited herein are thus included either in hard copy or on diskette. An index to the materials is also enclosed.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: Claudia J. Flynn, Esq.
Chief of Staff
Criminal Division

Larry D. Thompson, Esq.
Independent Counsel

Enclosures

in the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), that Thomas T. Demery gave completely truthful testimony in the Dean case. That matter is addressed more fully in my letters to Mr. Thompson dated May 26, 1997, August 13, 1997.